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A LAW CORPORATION

January 8, 2016

Hon. Charles R. Breyer
United States District Court
Northern District of California
450 Golden Gate Avenue, Dept. 6
San Francisco, CA 94102

Re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products
Liability Litigation*, 3:15-MD-2672-CRB
Steering Committee Application for Judith A. Pavay

Dear Judge Breyer:

Pursuant to Pretrial Orders 1 and 2, please consider my application for a position on the Plaintiffs' Steering Committee (PSC). I represent Hawaii consumers and I have been nominated by attorneys representing similar consumers in separate actions in Nevada, Pennsylvania, Oklahoma, Massachusetts, and New Hampshire to submit my application for PSC.¹ I recognize some may consider such states "small players" given the geographic scope of this case. Likewise, while my co-counsel possess MDL experience, none of our firms are "typical" MDL firms that pursue such cases and frequently appear on steering committees or as lead counsel. Instead, what my team possesses is a solid grounding in the law of our respective states and a proven track record of successfully resolving complex product liability, consumer, and class action cases. No doubt there are many exceptional lawyers with impressive resumes filled with MDL experience applying for PSC appointment and a number of these attorneys will, and should, be selected to the PSC given their MDL backgrounds. My application for PSC appointment, however, is not predicated upon prior MDL appointment but rather seeks to represent the interests of smaller states and independent law firms who hope the PSC will reflect the geographic diversity of this litigation and reflect a diverse and representative cross-section of the plaintiffs' bar.

Professional Experience in Complex Consumer & Product Litigation & Contact Information

I have been a trial lawyer in Hawaii since 1977 and I am honored to be the first woman invited into the Hawaii Chapter of the American Board of Trial Advocates approximately 20 years ago. I have litigated many complex product liability, consumer protection and complex commercial cases to verdict or successful resolution and I am honored to be recognized as one of Hawaii's "Best Lawyers" for plaintiffs' litigation and commercial litigation. Among other appointments and honors received during my 39-year career, I am a member of the Hawaii Supreme Court's Committee on Professionalism, chaired by Hawaii Supreme Court Associate Justice Richard Pollack. This committee helps set and uphold professional standards for the bar of Hawaii, which prides itself on collaboratively practicing law with aloha.²

My partner, Sharon Lovejoy, who is also counsel of record for Hawaii consumers, is a past President of the Federal Bar Association, Hawaii Chapter, and recently completed a three-year term as a Ninth Circuit Lawyer Representative. Sharon is experienced in defending class actions, including against financial institutions in Hawaii, and the University of Hawaii. My partner Mark Bennett, who is also counsel of record, is the former Attorney General for the State of Hawaii for eight years and Assistant U.S. Attorney prior thereto. To the extent collaboration with State governments, the DOJ and Federal agencies becomes important, Mark would serve as an excellent liaison and has much experience in this arena. Similarly, my co-counsel Kyle Smith has

¹ See Attachment A.

² See Attachment B, Resume

substantial consumer protection, class action, and product liability experience in Hawaii and Nevada. My co-counsel and I therefore possess many decades of experience in successfully resolving large, complex cases and possess the resources to try cases to verdict. A few examples include:

- *Glover Orchids, et al., v. E.I. du Pont de Nemours, et al.*, No. 93-00063K – Co-lead counsel in complex product liability litigation in Hawaii State Court against du Pont involving its fungicide, Benlate, representing more than 20 farms. Judge Ronald Ibarra, Third Circuit Court-Kona, (808)443-2210.
- *Virendra Nath, et al. v. Kapalua Bay, LLC, et al.*, No. 11-1-0216(3); *Krishna Narayan, et al. v. Marriott International, Inc., et al.*, No. 12-1-0586(3)– Co-lead counsel on behalf of 56 plaintiffs in three fraud and consumer protection cases under Hawaii law against Marriott, Ritz Carlton, and other defendants on Maui, which has just recently resulted in an important Hawaii Supreme Court decision related to the formation and enforcement of arbitration agreements. I argued this case below as well as before our Supreme Court and this new law will be important in deciding the enforceability of similar arbitration agreements that exist in this case (e.g. the enforcement of arbitration agreements between consumers and VW dealers). Judge Joseph E. Cardoza, Second Circuit Court, (808)244-2860.
- *Aana, et al. v. DuPont Pioneer*, No. 12-00231 – Mass tort bellwether case tried by Kyle Smith who obtained successful jury verdict against DuPont Pioneer on behalf of ~200 residents of Waimea, Kauai. Hon. Barry Kurren, U.S. District Court, (808)541-1306.
- *LoPresti v. Haseko*, No. 13-1-1995 – Consumer class action on behalf of more than a thousand Hawaii consumers, wherein Kyle Smith and co-class counsel obtained jury verdict under Hawaii consumer protection law (Haw. Rev. Stat. §480-2) for unfair and deceptive trade practices on Oahu. Hon. Gary W.B Chang, First Circuit Court, (808) 539-4084.
- *Slaughter, et al. vs. Uponor, Inc., et al.*, No: 2:08-cv-01223 – national class action product liability case involving defective plumbing systems in over 100,000 homes resulting in a settlement for all plaintiffs.
- *In Re Kitec Fitting Litigation*, No: A493302– product liability class action in Clark County, Nevada, wherein Kyle Smith was co-class counsel, which recovered approximately \$300 million in settlements and two jury verdicts on behalf of ~35,000 homeowners. More importantly, class counsel designed and oversaw a multi-year program to actually fix homes to ensure that the money paid by defendants was used to actually address the problem.

Commitment, Ability to Cooperate With Other Counsel, and Access to Resources

I am fully committed to this case as are the resources of my firm and my co-counsel's firm. We understand this case may likely prove a long-term and potentially expensive commitment and we are prepared to meet our obligations to our clients. Our law firm has 19 lawyers and an equal number of staff including experienced paralegals dedicated to IT document collection, review, production and organization in large document cases. We have state of the art document search software and trained IT staff. Further, our co-counsel, Lynch Hopper Salzano & Smith, has litigated class actions involving tens of thousands of plaintiffs and is fully committed to this case. No doubt this case at some point will require an incredible amount of coordination and collaboration with various stakeholders to deliver a remedy to consumers. Our team possesses precisely this kind of experience to assist in this case. I have personal and professional qualities that are ideal and necessary for working collaboratively toward a fair and efficient resolution of this case. The Hawaii Federal Court Magistrate Judges, J. Kurren and J. Chang, Federal District Court Judges Kobayashi, Seabright, Kay and Mollway and Ninth Circuit Judge Rick Clifton

(who is from Hawaii) can be contacted as references, as well as Associate Justices Richard Pollack and Michael Wilson. Likewise, Keith Hunter, President of the preeminent ADR company in Hawaii Dispute Prevention Resolution, Inc. and its most experienced mediator, will vouch for us and my co-counsel, Kyle Smith, regarding our reputations and work in trials and mediations over the years. Contact information for each of above is attached.³

Willingness to Serve as Lead Counsel or Steering Committee

Although I am willing to serve in any capacity necessary to benefit this case, I am applying for a position on the PSC.

Category of Plaintiffs:

In the interest of broadening participation in MDL beyond the handful of firms typically involved, I would serve as an excellent representative of consumer interests for smaller states in this litigation. Of note, Hawaii has among the strongest consumer protection statutes and case law in the nation.

Other Considerations:

This case is incredibly important for the course and future of consumer protection litigation in the United States. Volkswagen's behavior is emblematic of what happens when leaders lose sight of their ethical responsibilities to their customers in the pursuit of profit. Learning how and why this happened, correcting the problem and enlisting Volkswagen's help in encouraging other business leaders to think first of their customers instead of their bottom lines could help shift a culture focused on short-term profits before treating customers and workers fairly.

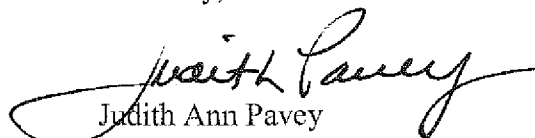
I have also had the pleasure of working with Elizabeth Cabraser in the past and frankly her involvement also encourages me to apply for this committee as there are few women who have practiced in this field as long as we have. She is an extraordinary lawyer and person and it would be an honor to work with her on this case. We agree the ultimate focus should be on how best to resolve these cases and that we have an opportunity to create a model that will reflect positively on our civil justice system.

This case is also important because of how it will reflect upon plaintiffs' attorneys in this country. Social change by civil action is a core philosophy that I and my co-counsel adhere to and it is essential in a capitalistic democracy like ours if we are to continue as a civil society. Prof. Robert Reich once wrote to me:

Cynicism is one of society's greatest barriers to social change. It undermines all effort, discourages all activism, overturns democracies.

I try to keep this in mind in pursuing justice for my clients. In sum, I want to be part of the solution. Therefore, thank you for your consideration and I look forward to working on this important case in any capacity that assists our collective efforts.

Sincerely,


Judith Ann Pavey

Attachments A, B & C

³ See Attachment C.